

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL JOHN SCOTT,

Defendant.

NO. CR20-018RBL

**STIPULATED MOTION FOR  
PROTECTIVE ORDER**

The United States of America, by and through Brian T. Moran, United States Attorney for the Western District of Washington, and Marci L. Ellsworth and Karyn S. Johnson, Assistant United States Attorneys for said District, and Defendant Michael John Scott and his counsel, Amy Muth, hereby file this Stipulated Motion for Protective Order.

As a part of its investigation into Defendant's alleged drug trafficking activities, agents utilized a confidential source. The confidential source and Defendant exchanged text messages (which the government has already provided in discovery, with redactions) and six recorded telephone calls (which the government has not yet provided).

The six recorded telephone calls (the "Protected Material") will reveal the identity of the confidential source, since the source's voice is clearly audible. The government is concerned that dissemination of the Protected Material may create opportunities for

1 witness intimidation or retaliation against the confidential source or his/her associates and  
2 family members.

3 To forestall such witness intimidation or retaliation and protect the identity of the  
4 confidential source, the parties have stipulated to the entry of the proposed Protective  
5 Order accompanying this motion. In short, physical possession of the Protected Material  
6 would be limited to the attorney of record in this case, and to any investigators, expert  
7 witnesses, and other agents that the attorney of record hires in connection with this case  
8 (collectively referred to as “the defense team”), and to staff at the Federal Detention  
9 Center (FDC), where Defendant is detained. The Defendant would not be permitted to  
10 possess or maintain copies of the Protected Material, but may review them in the FDC’s  
11 Education Department (pursuant to their policies/practices). These proposed restrictions  
12 are designed to permit full use of the Protected Material in the preparation of the defense  
13 and to avoid dissemination of the Protected Material to other persons who have no  
14 legitimate defense-related need for the information. They are not designed to prevent  
15 counsel from fully discussing and reviewing the Protected Material with Defendant.

# 16 I. LEGAL STANDARD

17 In federal criminal cases, the government’s discovery obligations are established  
18 by Federal Rule of Criminal Procedure 16 (“Rule 16”), supplemented by the Local Rules  
19 for the Western District of Washington (“Local Rules”), the Jencks Act, 18 U.S.C. §  
20 3500, *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150  
21 (1972). Broadly speaking, these rules, statute, and cases, respectively, provide the  
22 framework by which both parties are to produce discovery and by which a court can  
23 regulate discovery before trial; require the government to produce its witnesses’ prior  
24 statements after they testify at trial; place an obligation on the government to learn of and  
25 disclose to the defense any exculpatory or impeachment evidence favorable to the  
26 defendant that is in the government’s possession; and require the government to disclose  
27 information which could be used to impeach its witnesses. *See* Fed. R. Cr. Pro. 16; 18  
28 U.S.C. § 3500(a); *Brady*, 373 U.S. at 87; *Giglio*, 405 U.S. at 154-55.



1 The parties are stipulating to entry of a Protective Order that would prohibit the  
2 physical dissemination of the Protected Material to Defendant, but would allow  
3 Defendant to access it at the FDC as described in the proposed Protective Order. The  
4 parties agree and stipulate that this is the only reasonable method by which the  
5 government and the Court can ensure the safety of the confidential source and his/her  
6 family and associates.

7 **III. CONCLUSION**

8 The parties respectfully request that this Court issue the proposed Protective Order  
9 accompanying this motion.

10 DATED this 20th day of May 2020.

11  
12 Respectfully submitted,

13 BRIAN T. MORAN  
14 United States Attorney

15  
16 s/Marci L. Ellsworth  
17 MARCI L. ELLSWORTH  
18 KARYN S. JOHNSON  
19 Assistant United States Attorneys

20  
21 s/ Amy Muth  
22 AMY MUTH  
23 Counsel for MICHAEL JOHN SCOTT  
24  
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 20, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney of record for the defendant.

/s/ Lisa Crabtree

LISA CRABTREE

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